MASTER AND SERVANT—WORKMEN'S COMPENSATION ACTS—RELIEF FUND BENEFITS. — An employee on becoming a member of the relief fund department of a railroad company contracted that in the event of his injury the benefits from the relief fund should not be paid until he had executed to the company a release from all damage claims. After an injury the employee executed a release and received accident relief benefits. He thereafter sued for damages. The Federal Employers' Liability Act provided that "every contract, rule, regulation or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this act shall be to that extent void." *Held*, that the employee may recover. *Baltimore & Ohio R. Co.* v. *Gawinske*, 197 Fed. 31 (C. C. A., Third Circ.).

The court in the principal case recognizes the strong arguments in favor of refusing recovery but declares itself bound by a case decided by the United States Supreme Court. *Chicago, B. & Q. Ry. Co.* v. *McGuire*, 219 U. S. 549, 31 Sup. Ct. 259. The statutes involved in the two cases, however, are radically different. 35 U. S. STAT. AT LARGE 66, 1909 Fed. Stat. Ann. 585; IOWA CODE, 1907, § 2071. In the earlier case the Iowa statute clearly showed an intent to allow recovery after acceptance of a relief fund, the only question being as to the constitutionality of such provision. In fact an earlier Iowa employers' liability act which expressly prohibited contracts restricting liability had been amplified in this particular for the very reason that under it the employee could not recover after exercising his option to take the relief fund. *McGuire* v. *Chicago, B. & Q. Ry. Co.*, 131 Ia. 340, 108 N. W. 902; *Donald* v. *Chicago, B. & Q. Ry. Co.*, 93 Ia. 284, 61 N. W. 971. It is submitted that the present federal statute does not materially differ from the common-law rule which makes void agreements limiting liability for negligence. *Chicago, B. & Q. Ry. Co.* v. *Curtis*, 51 Neb. 442, 71 N. W. 42; *Leas* v. *Pennsylvania Co.*, 37 N. E. 423 (Ind. App.). See RENO, EMPLOYERS' LIABILITY ACTS, 2 ed., § 12. Furthermore, under other statutes, which are perhaps not quite so broad as the one now under discussion, it has been invariably held that a release given after the injury in consideration of a relief fund is a valid compromise. *Petty* v. *Brunswick & Western Ry. Co.*, 109 Ga. 666, 35 S. E. 82; *Pittsburgh, C., C. & St. L. Ry. Co.* v. *Cox*, 55 Oh. St. 497, 45 N. E. 641. The words employed in this statute do not indicate an intent on the part of Congress to force a railroad company to litigate every damage claim in order to purge itself of liability; a fair construction would seem to be that the federal act, like the common law and the state statutes, merely prohibits a railroad company from contracting away liability that may arise from its negligence in the future.

MORTGAGES — PRIORITIES — EQUITABLE SUBSTITUTION. — The intending purchaser of a first mortgage took a new mortgage instead of an assignment of the old. The old mortgage was removed. There was an outstanding judgment against the mortgagor. *Held*, that the owner of the judgment has a first lien on the property of the mortgagor, equitably entitled to priority as against the new mortgage. *Nelson* v. *McKee*, 99 N. E. 447 (Ind.).

A mortgage was given to secure an advance with which another mortgage prior to a judgment lien was removed. The judgment creditor purchased the property at execution upon the judgment and in the appraisement the amount of the mortgage was deducted. The judgment creditor brought an action to quiet title against the mortgage on the theory that his judgment was a prior lien. *Held*, that the new mortgage is equitably entitled to priority. *Frederick* v. *Gehling*, 137 N. W. 998 (Neb.). See NOTES, p. 261.

MUNICIPAL CORPORATIONS — MUNICIPAL DEBTS AND CONTRACTS — LIABILITY FOR SERVICES PERFORMED UNDER VOID CONTRACT. — A city engaged an accountant to audit its books. The contract of service was void for exceed-

ing the debt-contracting power fixed by statute. *Held*, that the accountant cannot recover in quasi-contract. *Haskins* v. *Oklahoma City*, 126 Pac. 204 (Okl.).

For a discussion of the principles involved, see 17 HARV. L. REV. 343.

OFFER AND ACCEPTANCE — UNILATERAL CONTRACTS — PERFORMANCE CONSTITUTING ACCEPTANCE. — The defendant company offered a share in its profits to any employee who worked a certain length of time, provided he was not discharged before January first. The plaintiff worked the required time, but was discharged on December thirtieth. In a suit for a share in the profits a verdict for the defendant was directed. *Held*, that such direction is error. *Zwolanek* v. *Baker Mfg. Co.*, 137 N. W. 769 (Wis.).

When an offer to a unilateral contract is made, the offeror, having the right to dictate his terms, is not bound until every term of his offer has been complied with; and he can revoke before complete performance. *Williams* v. *West Chicago Street R. Co.*, 191 Ill. 610, 61 N. E. 456; *Biggers* v. *Owen*, 79 Ga. 658, 5 S. E. 193. Compliance with the terms reasonably to be implied from the offer is, of course, sufficient. *Haskell* v. *Davidson*, 91 Me. 488, 40 Atl. 330; *Crawshaw* v. *City of Roxbury*, 7 Gray (Mass.) 374. Some courts, however, have held that part performance by the offeree binds the offeror. *Los Angeles Traction Co.* v. *Wilshire*, 135 Cal. 654, 67 Pac. 1086; *Louisville & Nashville R. Co.* v. *Goodnight*, 10 Bush (Ky.) 552. But a bilateral agreement cannot correctly be implied where there is in fact no such agreement. *White* v. *Corlies*, 46 N. Y. 467; *Stensgaard* v. *Smith*, 43 Minn. 11, 44 N. W. 669. It is submitted, therefore, that the principal case is wrong in considering the company bound by an offer not accepted within its terms. See WILLISTON, WALD'S POLLOCK ON CONTRACTS, 3 ed., 34, n. 39; ASHLEY, CONTRACTS, 78. The reasoning of the court has been influenced by the desire to attain a just result which might well have been reached on other principles. The company, having received an added benefit from the continuous employment, is liable in quasi-contract for the amount of the benefit; and the profits offered would be strong evidence of the value of such benefit. *Fayette County* v. *Faisin's Executor*, 44 Tex. 585.

PLEDGE — UNINDORSED PROMISSORY NOTE HELD AS COLLATERAL SECURITY: DUTY TO COLLECT. — The payee of a demand promissory note pledged the note as security for a debt. The note, which was not indorsed by the payee, continued in the possession of the pledgee until it was barred by the Statute of Limitations. Thereafter the pledgee sued on the debt. *Held*, that the payee cannot set off the amount of the note. *Muthrukrishnien* v. *Viraraghava Iyer*, 12 Citator 1046 (Madras, High Ct. of Judicature).

It is clear that under the American rule a negotiable instrument need not be indorsed to create a valid pledge. See *Bridge Co.* v. *Savings Bank*, 46 Oh. St. 224, 229; JONES, PLEDGES, § 142. A pledgee of negotiable paper is bound to use reasonable diligence in the collection of it. See *Roberts* v. *Thompson*, 14 Oh. St. 1, 7; *Kiser* v. *Ruddick*, 8 Blackf. (Ind.) 382, 384. Although in the principal case the pledgee could not sue in his own name as the note was unindorsed, and although there was no assignment, the pledging of the note would seem to be an implied authority to the pledgee to sue in the name of the pledgor. *Cf. Grover* v. *Grover*, 24 Pick. (Mass.) 261. See *Blazo* v. *Cochrane*, 71 N. H. 585, 586. Otherwise, as the pledgor has lost the right to the possession, neither party would be able to sue on the note. As the pledgee has failed to exercise this implied power to sue, he should be liable for the resulting loss. Under the English law, however, the decision might be supported as the English courts are less ready than American courts to spell out an implied power to sue. See *Milroy* v. *Lord*, 4 DeG., F. & J. 264, 276.